

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Reexamination of the Comparative Standards)	MM Docket No. 95-31
for)	
Noncommercial Educational Applicants)	
)	
Association of America's Public Television)	
Stations' Motion for Stay of Low Power)	
Television Auction (No. 81))	

REPLY COMMENTS OF IOWA PUBLIC BROADCASTING BOARD

Iowa Public Broadcasting Board ("IPBB"), by its attorneys, hereby submits its reply comments in the above captioned proceeding.¹ IPBB is the statewide public broadcasting system for Iowa and the licensee of eight (8) TV stations and several TV translators throughout the State of Iowa. IPBB is also party to a pending settlement agreement for vacant unreserved NTSC Channel 30 in Davenport, Iowa.

DISCUSSION

IPBB is unclear as to why Jack Gartner has filed Comments in this proceeding. Although Mr. Gartner contends that he will be directly impacted by the outcome of this proceeding, Mr. Gartner and IPBB are currently parties to pending settlement agreements regarding the mutually exclusive commercial and NCE applications for vacant unreserved Channel 30 in Davenport, Iowa. If the settlement agreements are approved, Mr. Gartner's Comments will be mooted, as Mr. Gartner will be awarded Channel 30.

¹ Reexamination of the Comparative Standards for Noncommercial Educational Applicants; Association of America's Public Television Stations' Motion for Stay of Low Power Television Auction (No. 81), Second Further Notice of Proposed Rulemaking, FCC 02-44, MM Docket No. 95-31.

Nonetheless, in the event that the settlement agreements are not approved (or the parties' obligations are not fulfilled), IPBB submits that Mr. Gartner's Comments cannot stand unrebutted on the record. IPBB believes that the first option Mr. Gartner supports, holding NCE entities ineligible for nonreserved channels, would be fundamentally unfair to IPBB and the other NCE entity who have already applied for construction permits for nonreserved Channel 30. IPBB has devoted a considerable amount of resources to its efforts to provide NCE service to the Davenport, Iowa area. At the time IPBB made its application for nonreserved Channel 30, it was eligible for the channel and had no reason to believe it would not remain so. To now simply hold IPBB and the other noncommercial applicant ineligible, in effect awarding the channel to Mr. Gartner, would unfairly negate IPBB's vested interest (and years of investment) in acquiring the channel.

Similarly, option two, allowing NCE applicants to acquire licenses for nonreserved channels only when there is no conflict with commercial entities, will not fairly resolve the already existing conflict over Channel 30. Mr. Gartner makes much of his argument that, in the event of mutually exclusive commercial and NCE applications, the Commission should revise its anti-collusion rules to permit competing applicants to pursue settlement. However, he also acknowledges that, under option two, NCE applications that are mutually exclusive with commercial applications will simply be dismissed. Surely, Mr. Gartner cannot believe that, should the instant settlement agreements for Channel 30 fall through, IPBB would be on any "level playing field" with Mr. Gartner if it faced summary dismissal in the event no new settlement agreement was reached. Therefore, in fairness to IPBB and the other existing applicant, the Commission should not now hold NCE entities ineligible for nonreserved Channel 30 by applying either option one or option two at this point in the proceedings.

Moreover, IPBB believes that both option one and option two are generally contrary to congressional intent and Commission precedent. Congress and the Commission have always encouraged and supported public broadcast stations providing service over reserved spectrum or unreserved spectrum. It would be inconsistent with the universal service mandate of public broadcasting for the Commission to now bar or restrict access to unreserved spectrum.² In addition, barring NCE entities when there is a mutually exclusive commercial applicant for the same channel is contrary to decades of Commission precedent permitting commercial and noncommercial applicants to compete for unreserved channels.³

Like Mr. Gartner, IPBB has no objection to option three, which would provide NCE entities opportunities to reserve additional channels. However, because IPBB's application for Channel 30 has already been filed, option three will provide no relief to IPBB in this situation.

IPBB instead proposes the following simple procedure to resolve the conflict between the two NCE applicants and Mr. Gartner with regards to nonreserved Channel 30:

- (1) The Commission should first evaluate whether the need for NCE service or commercial service is greater in the Davenport, Iowa area served by Channel 30.⁴ IPBB submits that such a need-based evaluation is good and consistent public policy, as it would allow the Commission to consider the interests of both Mr. Gartner and the two NCE applicants who are already involved, as well as the public interest in providing the best possible service to the area.

² 47 U.S.C. § 396(a)(9) (“[I]t is in the public interest for the Federal Government to ensure that all citizens of the United States have access to public telecommunications service through all appropriate available telecommunications distributions technologies”).

³ See, e.g., Memorandum Opinion and Order in Docket No. 20418, 90 FCC 2d 160, 179-180 (1982); Construction Permit for New Television Broadcast Station in San Angelo, Texas, 18 RR 2d 714, 21 FCC 2d 901 (1970) (resolving competing applications between a noncommercial and a commercial applicant for an unreserved channel); Reservation of Channel 13 in Eureka, California, 7 RR 2d 1593, 3 FCC 2d 614 (1966) (permitting an educational entity to apply for use of unreserved channel against commercial applicants, and pointing out that “numerous ETV stations have commenced operation on unreserved channels”); Channel Assignments in Wilmington-Atlantic City, 18 RR 1653, 1661-62 (1959) (declining to reserve “commercial” television channel for educational use and stating that educational entities could apply for use of unreserved channel on comparative basis with commercial applicants).

⁴ This evaluation could be similar to the one set forth in amended Section 73.202(a)(1) of the Commission's Rules, as established in Reexamination of the Comparative Standards for Noncommercial Educational Applicants, Report & Order, FCC 00-120, 15 FCC Rcd 7386, ¶ 114 (rel. April 21, 2000).

(2) If the Commission finds that the need for NCE service in the area served by Channel 30 is greater, the Commission should then decide among competing NCE applicants using the already-established point system.

(3) If, however, the Commission decides the need for commercial service is greater, the Commission should allow NCE applicants to compete at auction if they wish to do so. This approach would be consistent with established Commission precedent permitting both NCE and commercial entities to compete for nonreserved spectrum.

CONCLUSION

For the reasons described above, IPBB does not support either option one or option two with respect to the pending NCE and commercial applications for nonreserved Channel 30 in Davenport, Iowa. IPBB instead proposes that the Commission use a need-based approach to first determine whether the area served by Channel 30 would more greatly benefit from the provision of NCE or commercial service. If the Commission decides in favor of NCE service, it should then resolve mutually exclusive applications under the already existing point system. If the Commission instead decides in favor of commercial service, it should then auction the channel, allowing the existing applicants, commercial and noncommercial, to vie for Channel 30.

Respectfully submitted,

IOWA PUBLIC BROADCASTING BOARD


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* Admitted in Massachusetts Only